



0000156758

RECEIVED
BEFORE THE ARIZONA CORPORATION COMMISSION

2014 OCT 16 A 11:47

COMMISSIONERS

BOB STUMP, Chairman
GARY PIERCE
BRENDA BURNS
BOB BURNS
SUSAN BITTER SMITH

ARIZONA CORPORATION COMMISSION
DOCKET CONTROL

Arizona Corporation Commission

DOCKETED

OCT 16 2014

DOCKETED BY

IN THE MATTER OF THE APPLICATION
OF LIBERTY UTILITIES (LITCHFIELD
PARK WATER AND SEWER), CORP. FOR
APPROVAL OF AN EXTENSION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WATER
UTILITY SERVICE IN MARICOPA
COUNTY, ARIZONA.

DOCKET NO. W-01427A-14-0134

ORIGINAL

IN THE MATTER OF THE APPLICATION
OF LIBERTY UTILITIES (LITCHFIELD
PARK WATER AND SEWER), CORP FOR
APPROVAL OF AN EXTENSION OF ITS
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE WASTEWATER
UTILITY SERVICE IN MARICOPA
COUNTY, ARIZONA.

DOCKET NO. SW-01428A-14-0180

IN THE MATTER OF THE APPLICATION
OF VALLEY UTILITIES WATER
COMPANY, INC. FOR AN EXTENSION OF
ITS CERTIFICATE OF CONVENIENCE
AND NECESSITY TO PROVIDE WATER
UTILITY SERVICE IN MARICOPA
COUNTY, ARIZONA.

DOCKET NO. W-01412A-14-0262

**POST HEARING CLOSING BRIEF OF
TRS 8, LLC****I. INTRODUCTION**

TRS 8, LLC ("TRS 8" or the "Landowner") hereby submits this Closing Post Hearing Brief in support of the granting of Liberty Utilities' ("Liberty") Application to expand their Certificate of Convenience and Necessity ("CC&N") to provide water and wastewater service to

1 Marbella Ranch, currently owned by Marbella Ranch Limited Partnership, A Delaware limited
2 partnership, which is an affiliate of TRS 8. On September 30, 2014 TRS 8 purchased the 365
3 acre property known as Marbella Ranch from El Paseo Natural Gas Company. The Commission
4 must decide which of two competing applications between Liberty and Valley Utilities Water
5 Company, Inc. (Valley”) will be granted the ability to provide water service to approximately
6 1,260 residential units within Marbella Ranch, and approximately 50.5 acres of industrial uses.
7 Although the Utilities Division Staff (“Staff”) determined that both Liberty and Valley were
8 interconnected, potable water providers, Staff distinguished the two applications by stating that
9 Liberty is “financially viable” and that Liberty “has been requested to provide ... service to
10 Marbella Ranch Development” (See Executive Summary of Staff Report). Staff recommends
11 that the Commission approve Liberty’s application. TRS 8 supports Staff’s recommendation to
12 grant the CC&N for water and wastewater service to Liberty and not grant the water service to
13 Valley for the following reasons.

13 **1. Ownership Preference**

14 TRS 8 met with both Valley and Liberty to determine which utility provider could
15 provide the best service to Marbella Ranch. This evaluation took a number of months and
16 included a number of meetings to discuss all opportunities. TRS 8 hired a professional utilities
17 expert to help evaluate both Valley and Liberty’s ability to serve Marbella Ranch. TRS 8
18 evaluated both companies’ ability to serve and determined that it was not only in the best interest
19 of TRS 8 to choose Liberty, but also in the best interest of the future home owner who will be
20 using and paying for the future services. TRS 8 formally requested service from Liberty and
21 supported their subject application based on many factors. TRS 8 did not request service from
22 Valley and feels strongly that they are not a suitable choice to provide water service to Marbella
23 Ranch. If Liberty is not granted the ability to serve Marbella Ranch, TRS 8 would likely
24 reevaluate its’ options and investigate an HOA managed option or the formation of a Domestic
25 Water Improvement District (“DWID”). TRS 8 feels strongly that owner preference should be
26 given a great amount of weight. This position was supported by the Commission in Decision No.

1 68453, whereby the Commission granted a CC&N expansion to Woodruff Water Company
2 ("WWC") based on the landowner's preference (Pivotal Group) for WWC to serve the Sandia
3 property. Decision 68453 at 28. To approve a CC&N expansion for Valley to serve Marbella
4 Ranch without property owner support, and without evidence that they are at least equally
5 qualified as Liberty puts landowner's property rights at risk, which then transfers extra risk to the
6 public at large.

7 **2. Ability to Serve**

8 TRS 8 is concerned that Valley's incomplete engineering report does not support their
9 claim to be able to provide commercial fire flows for the 50.5 acre industrial property. TRS 8
10 does not believe that Valley is best situated to construct or expand their system to provide for
11 commercial fire flows. However, TRS 8 feels comfortable that Liberty's system can provide
12 commercial fire flows as is evidenced by Liberty's complete engineering report.

13 TRS 8 is also very concerned that Valley does not have a plan in place to raise enough
14 capital to meet Staff's current recommended stipulation number 3 that states that if approved,
15 Valley would be required "[t]o fund the entire construction costs with equity." When Valley was
16 pressed about the ability to meet staff's recommendations, Mr. Prince from Valley stated that
17 "[i]t would be very difficult for us." Hearing Transcript at 105, line 19. Given the uncertainty
18 regarding Valley's ability to raise enough capital to meet staff's recommended conditions, TRS 8
19 believes that Valley has not adequately demonstrated their financial ability to serve Marbella
20 Ranch.

21 **3. Benefits to Customers**

22 Marbella Ranch is envisioned as a medium to high density mix-use residential
23 development that will include starter homes for young families and a housing option to those
24 employed or stationed at Luke Air Force Base. Given the affordability factor, it is very
25 important to TRS 8 that the needs of the future utility customer are taken into account. As part
26 of the evaluation between Valley and Liberty, existing rates were analyzed to determine which
company could provide a more cost effective service to the customer. As stated by Mr. Wittrock

1 of TRS 8, Valley's monthly water rates currently are approximately \$46.00 a month per 8,000
2 gallons, and Liberty is approximately \$25.00 per month. Hearing Transcript at 113, lines 14-23.
3 In addition to water rates that would be almost double with Valley, TRS 8 would also need to
4 install separate sewer shut-off valves for each residential unit if Valley was issued the service
5 area for water, since there would not be a true integrated system. Mr. Wittrock stated that in his
6 experience, a shut-off valve could cost between \$200.00 - \$400.00 per unit. Hearing Transcript
7 at Page 114, lines 15-17. Mr. Wittrock also stated that typically, the extra cost is passed on to the
8 buyer in the home price. Hearing Transcript at 114, lines 18-20. This could increase the costs to
9 the home buyers of Marbella Ranch by nearly \$500,000.00 for the entire 1,260 units, while
10 receiving no added benefit.

11 Lastly, TRS 8's preference for Liberty could create a better customer service
12 environment by providing one single utility service company for both water and sewer service
13 with one customer service point.

14 **4. Public Interest:**

15 In the end, the test to evaluate which utility company should serve water to Marbella
16 Ranch is which company meets the public interest test. When asked by Judge Pasternoster why
17 Valley's request would be in the public interest, Mr. Prince of Valley answered that it "would
18 definitely give us a broader base to be able to spread the costs. Hearing Transcript at 105, lines
19 4-7. Mr. Prince also stated that the benefit to Valley would include the ability to stabilize their
20 rates and "that it would allow us to have sufficient funds and capital to expend on improvements
21 in our system." Hearing Transcript at 89, lines 7-11.


22 The question of public interest should not be answered with the potential benefits to a
23 utility or the potential ability to benefit a company's financial structure. It should be answered
24 by examining the benefit to the public, including the customers who will pay the utility rate.
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

II. Conclusion

For the reasons set forth herein, TRS 8 respectfully request that the Commission follow Staff's recommendation and grant Liberty's application for a CC&N to provide water and wastewater service within the Marbella Ranch Development in Maricopa County, Arizona.

RESPECTFULLY SUBMITTED this 16th day of October, 2014



William E. Lally
Tiffany & Bosco, P.A.
2525 E. Camelback Road, Seventh Floor
Phoenix, Arizona 85016
Attorney for TRS 8

ORIGINAL and thirteen (13)
copies filed on October 16, 2014 with:

Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

Copies of the foregoing
Mailed/hand delivered on October 16, 2014 to:

Sasha Paternoster
Administrative Law Judge
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, Arizona 85007

Janice Alward, Chief Counsel
Legal Division
ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

1 Robert J. Metli
2 MUNGER CHADWICK, P.L.C.
3 2398 E. Camelback Road, Suite 240
4 Phoenix, AZ 85016
5 Attorneys for Valley Utilities Water Company

6 Robert L. Prince
7 VALLEY UTILITIES WATER COMPANY
8 6808 N. Dysart Road, Suite 112
9 Glendale, Arizona 85307

10 Steve Olea
11 Director, Utilities Division
12 ARIZONA CORPORATION COMMISSION
13 1200 West Washington Street
14 Phoenix, AZ 85007

15 Patrick Black
16 FENNEMORE CRAIG, PC
17 2394 E. Camelback Road, Suite 600
18 Phoenix, AZ 85016
19 Attorney for Liberty Utilities

20 By *Angie Munisteri*
21
22
23
24
25
26